

**From:** Belser, Evan  
**To:** [Brooks, Phillip](#)  
**Subject:** FW: Air & Radiation Law News for April 4, 2017  
**Date:** Tuesday, April 04, 2017 2:56:00 PM  
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EPA

EPA Leaders Trashed Staff Comments Critical of Data Overhaul Bill: Officials



## Snapshot

- EPA leadership trashed staff comments critical of a House-passed bill to require all research used in agency actions to be made public
- The comments, which were crafted for the Congressional Budget Office, argue the overhaul would incur significant cost, but an EPA spokesman lauded the measure

By [Brian Dabbs](#)

EPA staff comments on extensive burdens linked to a controversial House-passed bill never made it to the Congressional Budget Office. That's because personnel in the Environmental Protection Agency's leadership circle quashed the comments, choosing instead to say there would be no burden whatsoever if the bill became law, current EPA officials and an email obtained by Bloomberg BNA say.

The [legislation](#) (H.R.1430), which passed the House March 29 with only three Democrats in support, would require all research used in agency actions to be made public. The staff [comments](#) decried the bill, arguing it would cost the agency at least \$250 million a year while threatening agency know-how and jeopardizing personal and confidential business information. Those current officials, along with a former career official, said they have never witnessed such a dramatic contradiction between staff-crafted comments and the official evaluation passed onto the budget office.

'Complete Disregard'

"This is a complete disregard," said an agency official who helped write the comments. But "it's consistent with everything else we've seen. Basically all the actions of our organization are being curtailed from every direction. This is just another piece of that, and it doesn't take a big step to connect those dots."

An email obtained by Bloomberg BNA illustrated the inner-workings.

"The administrator's office decided not to send our responses forward," the email said. "[The Office of Congressional and Intergovernmental Relations] fought for the points we made, but [the administrator's office] ultimately decided to send a response back to [the Congressional Budget Office (CBO)] that said no cost, no comment." Bloomberg BNA is not publishing the email to safeguard the identities of those involved.

The bill would force the EPA, in moving forward with actions such as regulations, risk assessments and others, to only use data that is publicly available online and reproducible. Critics say it would require a costly database. Some studies also shouldn't be reproduced because they may harm humans, those critics add.

Research used in EPA rulemaking is often shielded from the public. The comments tout the Open Government Initiative, which the EPA finalized a plan for in December, as the right way to achieve the transparency goals of the bill.

But agency leadership staunchly backs the legislation, according to transition team spokesman John Konkus.

Konkus declined to speak to the staff comments, saying internal deliberations shape a final assessment that "helps ensure EPA is responsive to the president and the American people." The CBO relies on agencies to understand consequences of legislation. Budget law also directs agencies to provide the material to the budget office in order to boil down a budget assessment, often referred to as a "score."

Deliberations Typical

Stan Meiburg, the career employee who took on the role as acting deputy administrator under Administrator Gina McCarthy, said the scenario marks a departure from typical agency discussions over CBO comments.

"I don't recall cases where comments are just discarded," Meiburg told Bloomberg BNA. "There's typically a lot of dialogue, a lot of conversation and discarding would not be done unadvisedly or lightly."



“There would be burden and if that was really blown off, that's not a good thing,” he said.

Administrator Scott Pruitt, who landed at the EPA in February after a lengthy, bitter nomination process, vows to change agency culture. A new EPA will restore primacy of the states in environmental protection and base actions on sound science, rather than ideological convictions, he says.

As Oklahoma attorney general, Pruitt sued the EPA over a wide range of actions, including the Clean Power Plan and the Clean Water Rule. Critics say he's bent on defanging agency authority while providing industry free reign to pollute.

#### Staff Complaints

The bill, authored by House Science, Space and Technology Committee Chairman Lamar Smith (R-Texas), says the agency should only spend \$1 million a year on the new protocol, derived from appropriations otherwise approved.

But the staff comments say the legislation, known by the acronym the HONEST Act, would cost at least 250 times that.

“In addition to spending dollars and staff time on requesting and getting data from study authors, creating [information technology] infrastructure and a data management system to manage, store, and archive large volumes of data, and making the data available in a format that is useful and accessible to the public, EPA would also have to spend dollars and staff time combing through these extensive datasets to find and redact Personally Identifiable Information and Confidential Business Information,” the comments say. The bill directs the EPA to disclose that redacted information after a requester signs a confidentiality agreement.

The fear over compromised personal and business information would deter industry and academics from working with the agency, the comments say. That would all but eliminate EPA access in many cases to the highest-quality research, they add.

#### EPA, CBO Communication

The CBO estimate for the [bill](#), published the same day the measure passed the House, says the agency could spend anywhere from a few million to more than \$100 million annually on the new rules, but based on assurances from the agency the \$1 million annual spending is a safe bet.

“EPA officials have explained to CBO that the agency would implement H.R. 1430 with minimal funding and generally would not disseminate information for the scientific studies that it uses to support covered actions,” the estimate says. “That approach to implementing the legislation would significantly reduce the number of studies that the agency relies on when issuing or proposing covered actions for the first few years following enactment of the legislation.”

That assurance, however, suggests EPA leadership discussed the consequences of the legislation with the CBO. The EPA official who helped craft the comments said lower-level staff is in the dark about how and when that information was communicated, in light of the apparent “no cost, no comment” response.

Konkus declined to comment on that communication, and a CBO spokeswoman didn't respond to a Bloomberg BNA request for comment.

#### Future of the Bill

Sen. John Barrasso (R-Wyo.), the chairman of the Senate Environment and Public Works (EPW) Committee, which has jurisdiction over the bill, sponsored a previous iteration of the bill in the last Congress.

A spokesman for Barrasso, Mike Danylak, declined to comment on whether the committee aims to advance the measure in the foreseeable future. Danylak, however, indicated support. “The EPA's science should be open and transparent and the Senate Environment and Public Works Committee will continue to work to achieve these goals,” he told Bloomberg BNA.

Meanwhile, Kristina Baum, a spokeswoman for Smith, said her boss supports interaction between the EPA and the CBO, while also rejecting the concerns raised in the EPA staff comments.

“It is not accurate to say that there will be large amounts of studies that the EPA cannot use as the societal incentive is for researchers to make the science available for the benefit of its use for the good of the public,” she told Bloomberg BNA. The staff comments also pointed out the academic and industry drive to publicize research but indicated that incentive may be outweighed by concerns over compromised personal and business information.

But Barrasso's counterpart on the EPW Committee, ranking member Tom Carper (D-Del.), hinted at opposition.

“Any efforts to suddenly limit the data the EPA uses to keep Americans safe is nonsensical and, frankly, irresponsible,” Carper told Bloomberg BNA in a statement.

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**From:** OGCLibrary

**Sent:** Tuesday, April 04, 2017 12:07 PM

**To:** Allnutt, David <Allnutt.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Anderson, Steve <Anderson.Steve@epa.gov>; Aranda, Amber <aranda.amber@epa.gov>; Averbach, Jonathan <Averbach.Jonathan@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>; Branning, Amy <Branning.Amy@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Crum, Lynda <Crum.Lynda@epa.gov>; Crystal, Roy <crystal.roy@epa.gov>; Davis, Julian <davis.julian@epa.gov>; Dickinson, David <Dickinson.David@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>; Dolph, Becky <Dolph.Becky@epa.gov>; Doster, Brian <Doster.Brian@epa.gov>; Dubey, Susmita <dubey.susmita@epa.gov>; Dubois, Roland <Dubois.Roland@epa.gov>; Frey, Bert <frey.bertram@epa.gov>; Froikin, Sara

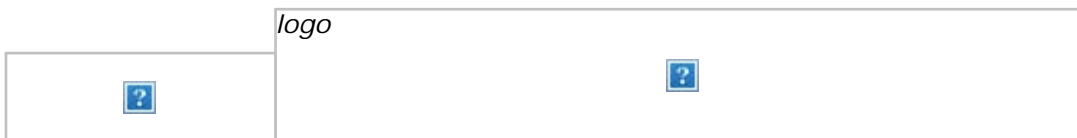


<Froikin.Sara@epa.gov>; Giles-AA, Cynthia <Giles-AA.Cynthia@epa.gov>; Graham, Cheryl  
<Graham.Cheryl@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Hoffman, Howard  
<hoffman.howard@epa.gov>; Hogan, Stephanie <Hogan.Stephanie@epa.gov>; Holmes, Carol  
<Holmes.Carol@epa.gov>; Igoe, Sheila <Igoe.Sheila@epa.gov>; Jordan, Scott  
<Jordan.Scott@epa.gov>; Kaplan, Robert <kaplan.robert@epa.gov>; Kataoka, Mark  
<Kataoka.Mark@epa.gov>; Klepp, Robert <Klepp.Robert@epa.gov>; Knapp, Kristien  
<Knapp.Kristien@epa.gov>; Lee, Michael <lee.michaelg@epa.gov>; Lovett, Lauren  
<Lovett.Lauren@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Manners, Mary  
<manners.mary@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Matthews, Julie  
<Matthews.Juliane@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Mclean, Kevin  
<Mclean.Kevin@epa.gov>; Morgan, Jeanette <Morgan.Jeanette@epa.gov>; Muller, Sheldon  
<Muller.Sheldon@epa.gov>; Nguyen, Quoc <Nguyen.Quoc@epa.gov>; Adair, Jocelyn  
<Adair.Jocelyn@epa.gov>; Odendahl, Steve <Odendahl.Steve@epa.gov>; Okoye, Winifred  
<Okoye.Winifred@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Pastorkovich, Anne-Marie  
<Pastorkovich.Anne-Marie@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>; Rowland, John  
<Rowland.John@epa.gov>; Schaaf, Eric <Schaaf.Eric@epa.gov>; Schmidt, Lorie  
<Schmidt.Lorie@epa.gov>; Senn, John <Senn.John@epa.gov>; Smith, Kristi <Smith.Kristi@epa.gov>;  
Snyder, Doug <Snyder.Doug@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Stahle,  
Susan <Stahle.Susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Stern, Allyn  
<Stern.Allyn@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Tierney, Jan <tierney.jan@epa.gov>;  
Ting, Kaytrue <Ting.Kaytrue@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Versace, Paul  
<Versace.Paul@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>; Walker, Mike  
<Walker.Mike@epa.gov>; Ward, W. Robert <Ward.Robert@epa.gov>; Werner, Jacqueline  
<Werner.Jacqueline@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Williams, Brent  
<Williams.Brent@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>; Williamson, Timothy  
<Williamson.Tim@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Wills, Jennifer  
<Wills.Jennifer@epa.gov>; Conger, Nick <Conger.Nick@epa.gov>; Blake, Wendy  
<Blake.Wendy@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>; Vergeront, Julie  
<Vergeront.Julie@epa.gov>; Tozzi, Lauren <Tozzi.Lauren@epa.gov>; Pilchen, Zach  
<Pilchen.Zach@epa.gov>; Skinner-Thompson, Jonathan <Skinner-Thompson.Jonathan@epa.gov>;  
Vijayan, Abi <Vijayan.Abi@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>; Caballero, Kathryn  
<Caballero.Kathryn@epa.gov>; Thompson, Christopher <Thompson.Christopher@epa.gov>;  
Williams, Christopher <Williams.Christopher@epa.gov>; Michaels, Lauren  
<Michaels.Lauren@epa.gov>; Nguyen, DucH <Nguyen.DucH@epa.gov>; Jordan, Deborah  
<Jordan.Deborah@epa.gov>; Charlton, Tom <Charlton.Tom@epa.gov>; Kulschinsky, Edward  
<Kulschinsky.Edward@epa.gov>; Portmess, Jessica <Portmess.Jessica@epa.gov>; Kaminer, Joan  
<Kaminer.Joan@epa.gov>; Kryman, Matthew <Kryman.Matthew@epa.gov>; Greenglass, Nora  
<Greenglass.Nora@epa.gov>; Spina, Providence <Spina.Providence@epa.gov>; Palmer, Karen  
<Palmer.Karen@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Conrad, Daniel  
<conrad.daniel@epa.gov>; OGC FEAT <OGC\_FEAT@epa.gov>; Hindin, David  
<Hindin.David@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>; Carrillo, Andrea  
<Carrillo.Andrea@epa.gov>; Krallman, John <krallman.john@epa.gov>; Mastro, Donna  
<Mastro.Donna@epa.gov>; Kane, Eleanor <kane.eleanor@epa.gov>; Ng, Brian <Ng.Brian@epa.gov>;  
Li, Ryland (Shengzhi) <Li.Ryland@epa.gov>; Spiegelman, Nina <Spiegelman.Nina@epa.gov>; Kodish,  
Jeff <Kodish.Jeff@epa.gov>



**Subject:** Air & Radiation Law News for April 4, 2017

## Air & Radiation Law News for April 4, 2017



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### Leading the News

*EPA*

#### [EPA Leaders Trashed Staff Comments Critical of Data Overhaul Bill: Officials](#)

EPA staff comments on extensive burdens linked to a controversial House-passed bill never made it to the Congressional Budget Office.

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### News

*Air Pollution*

#### [EPA Still Defending Obama-Era Resistance of Job Impact Review](#)

The Environmental Protection Agency is still sticking with its Obama-era stance in fighting a lower court decision directing the agency to consider potential coal job losses from air pollution regulations—a move seemingly out of step with President Donald Trump's efforts to relax rules for the coal industry.

*Air Pollution*

#### [Europe's Drop in Diesel Demand Set to Accelerate in VW Fallout](#)

Diesel engines are set to lose their dominance in Europe as Volkswagen AG's emissions cheating raises doubts about the technology's advantages.

*Air Pollution*

#### [Same Words, Two Meanings, Los Angeles Air District Says in Brief](#)

Same words, two meanings.

*Climate Change*

#### [IPCC Begins Early Work on New Climate Report](#)

The Intergovernmental Panel on Climate Change formally began the process that will lead to the release of its Sixth Assessment Report on climate change at its 45th session that concluded March 31 in Guadalajara, Mexico.

*Climate Policy*

#### [EU Carbon Market Emissions Fell a Third Year in 2016](#)



European Union carbon-market emissions dropped for a third year in 2016 as power utilities favored cleaner-burning natural gas to coal.

#### *Corporate Responsibility*

##### **Mineral Imports Into EU Must Be Conflict-Free by 2021**

Companies that import gold, tantalum, tin and tungsten into the European Union will have to ensure that their purchases of these minerals are not funding conflicts in war-torn countries, under a new regulation the 28 member countries of the EU signed April 3.

#### *EPA*

##### **EPA Budget Memo Details Cuts to State Assistance**

States will bear more of the burden for environmental protection if President Donald Trump's proposed budget succeeds, and new details show how the EPA would shed those responsibilities.

#### *Energy*

##### **Blue States Sue Trump Over Delay of Energy-Efficiency Rules**

Ten states led by Democrats and a handful of national environmental groups sued the Trump administration, claiming it's violating federal law by delaying energy-efficiency standards intended to save Americans almost \$24 billion (New York v. Perry, 2d Cir., 17-00918, 3/31/17).

#### *Energy*

##### **How Energy Transfer Cut 2,918 Acres Within Weeks for Pipe**

Not even 3,000 acres of forest could stop Energy Transfer Partners LP from clearing the proposed route of its \$4.2 billion Rover natural gas pipeline before time ran out.

#### *Energy*

##### **Japan Nuclear Court Wins Give Scant Guidance on Further Victory**

The battle is far from over for Japan's nuclear industry.

#### *Energy*

##### **No More Lazy Sunday Afternoons for U.K. Factories When Sun's Out**

Britain's grid operator may pay big energy consumers to use more electricity on sunny weekends when solar energy is plentiful and demand is low.

#### *Energy*

##### **Petronas May Consider Shell Site for Canadian LNG Project**

Malaysia's Petroliaam Nasional Bhd may be looking at building a \$27 billion liquefied natural gas export terminal in northwestern Canada on the site of an abandoned Royal Dutch Shell Plc energy project, according to the company's chief executive officer.

#### *Enforcement*

##### **CORRECTION**

A story published in the March 31 report, "Former Official Defends EPA as Not a 'Lawless' Agency," said President Donald Trump signed an executive order March 29 to roll back a number of President Barack Obama's climate change regulations, notably the Clean Power Plan. The correct date is March 28. The online version has been updated.

#### *Enforcement*

##### **U.S. Prosecutors Expected to Stay Tough on Environmental Crime: Former Officials**

Corporate officials will still face the threat of jail time should they get caught committing environmental crimes, despite President Donald Trump's friendlier tone toward business, several former Justice Department officials tell Bloomberg BNA.



#### *Environmental Justice*

##### **Attorneys Must 'Step Up' to Environmental Justice Challenges**

Environmental justice is a moral imperative and attorneys who fail to counsel clients about it are doing them a disservice, California Assembly Speaker Anthony Rendon (D) told a legal conference. "You need to step up, we all need to step up" to address the environmental challenges communities everywhere face, Rendon told attorneys at an American Bar Association's Section of Environment, Energy and Resources meeting March 31. "You need to listen people's ...

#### *Hydropower*

##### **Tidal Turbine Maker Bids to Turn U.K. Into a Green Saudi Arabia**

A British developer is bidding to build power turbines under the sea in Scotland in a contest for government contracts that starts April 3, aiming to prove for the first time that its technology is commercially viable.

#### *Motor Vehicles*

##### **India Hits the Brakes on Subsidies for 'Mild' Hybrids**

Cars and trucks that run completely on fossil fuels are no longer eligible for government subsidies under India's hybrid and e-car consumer incentive program.

#### *Oil & Gas*

##### **Canadian Stocks Need Oil's Secret Sauce to Revive Former Glory**

Canadian stocks ranked 21st among the world's developed markets in the first quarter, an ignominious performance that investors don't expect to improve much for the rest of the year -- unless oil bolts higher again.

#### *Oil & Gas*

##### **Oil Declines as Libya Output Rebound Offsets OPEC Output Curbs**

Crude dropped as the reopening of Libya's biggest oil field countered OPEC's optimism about production cuts.

#### *Oil & Gas*

##### **Qatar to Drill in World's Biggest Gas Field After 12-Year Freeze**

Qatar Petroleum plans to start a new development in the offshore North Field, ending a 12-year ban on new projects that allowed the company to assess how its current rate of extraction affects the giant reservoir it shares with Iran.

#### *Renewable Energy*

##### **South America's First Geothermal Plant Operating in Chile**

South America's first geothermal plant has begun operating at nearly 15,000 feet above sea level in the Atacama Desert, adding a new source of electricity to Chile's growing renewables sector.

## Regulatory Agenda

### **TODAY'S FEDERAL REGISTER**

NOTICE. Daily Environment Report's Regulatory Agenda, Comment Deadlines, and Federal Register summaries are now published as part of EHS Federal Regulatory Alert™  
<http://news.bna.com/frmn/>.

### **TODAY'S STATE REGISTERS**



NOTICE. State Register summaries are published as part of EHS State Regulatory Alert™  
<http://news.bna.com/srmn/>.

inepa.com



### **TRUMP'S EPA: [Agency at a crossroads -- Complete coverage](#)**

Inside EPA's **Risk Policy Report**, 04/04/2017

<https://insideepa.com/newsletters/risk-policy-report>

#### **Latest News**

### **Pruitt Launches Effort To Identify Rules Targeted For Elimination, Change**

EPA Administrator Scott Pruitt has begun to formally implement President Donald Trump's executive order directing agencies to develop an infrastructure for recommending regulations for elimination, naming agency staff in charge of the effort and seeking recommendations by mid-May on rules that should be repealed, replaced or modified.

### **Following Trump Order, EPA Launches Review Of Oil & Gas Methane Rule**

EPA is formally kicking off its review of its first-time methane limits for new oil and gas drilling operations, along with a host of other climate rules and policies, as directed by President Donald Trump's recent executive order targeting the Obama-era climate mitigation measures.

#### **Daily Feed**

### **EPA fights environmentalists' intervention in 'jobs' review suit**

EPA says environmentalists have no right to intervene in the suit over its duty to study job losses caused by Clean Air Act rules, in part because the Trump administration continues to contest the case.

### **District court denies EPA bid to dismiss air permit dispute case**

A federal district court says an Arkansas steel maker has legal standing to seek to force EPA to object to a rival producer's air permit, in a years-old fight over the companies' right to emit under Clean Air Act limits.

### **Carper seeks EPA data backing chlorpyrifos reversal**

"EPA's March 29 decision did not present any new scientific or legal analysis on which to base its reversal," says Sen. Tom Carper (D-DE).

### **Ewire: A daily news roundup**

A suggestion for how EPA could address Superfund sites. Plus, Clean Power Plan litigation recusal.

### **Pruitt faces tough questions on plans to roll back climate rules**

Pruitt's exchange on *Fox* did little to bolster his standing with his most conservative critics.



## **EPA memo details FY18 budget cuts on scores of programs**

EPA details how the administration's budget request will be implemented across the agency.

Greenwire



## **ENERGY EFFICIENCY**

### **States sue White House for blocking standards**

[Christa Marshall](#), E&E News reporter

Published: Monday, April 3, 2017

Ten states and multiple environmental groups are suing the Department of Energy for blocking efficiency standards they say are critical for reducing air pollution.

New York Attorney General Eric Schneiderman (D) and the attorneys general of other states filed a lawsuit in the 2nd U.S. Circuit Court of Appeals alleging that DOE's delay of efficiency rules for ceiling fans violates the Energy Policy and Conservation Act.

California, Connecticut, Illinois, Maine, Massachusetts, Oregon, Vermont and Washington joined the case with the Pennsylvania Department of Environmental Protection and the city of New York.

Separately, the same group and Maryland sent a notice to DOE of an intent to sue if the department does not act within 60 days on five other efficiency standards for compressors, walk-in coolers and freezers, power supply equipment, portable air conditioners, and commercial boilers.

In a statement, Schneiderman said the six standards would save consumers about \$24 billion and reduce 292 million tons of carbon dioxide, according to DOE's estimates.

"This is another example of how the Trump administration's polluter-first energy policy has real and harmful impacts on the public health, environment — and pocketbooks — of New Yorkers,"

Schneiderman said.

A DOE spokeswoman said the department does not comment on pending litigation.

DOE published a final rule for ceiling fans Jan. 19. Last month, the effective date for the rule was postponed until September ([Greenwire](#), March 21). At the time, DOE said seeking public input on the delay would be "impractical, unnecessary and contrary to the public interest."

The coalition alleges the delays violate a federal backstop provision against weakening final standards.

They also violate the Administrative Procedure Act by not allowing public notice and comment on major changes to a published final rule, according to the complaint.

DOE issued "pre-publication" final rules for compressors, power supply equipment, portable air conditioners, commercial boilers, and walk-in coolers and freezers in December 2016 but did not publish them in the *Federal Register*. The standards were subject to a 45-day review period that is now over ([Greenwire](#), Feb. 15). The coalition said it would file an additional lawsuit within 60 days requiring the department to publish the standards.

Separately, the Natural Resources Defense Council, Sierra Club, Consumer Federation of America and Texas Ratepayers' Organization to Save Energy filed a similar lawsuit on the ceiling fan rule and a notice of intent to sue on the other standards. Earthjustice and the National Consumer Law Center are assisting with the case.

"The Department of Energy last year signed off on all six standards and found them to be cost-effective with major benefits for consumers and the environment after going through a rigorous and legally required rulemaking process with ample opportunity for stakeholder participation" said Kit Kennedy, director of NRDC's Energy and Transportation Program.

The Obama administration finalized more DOE efficiency standards than the previous two administrations combined as part of a broader climate strategy. President Trump has not discussed the standards specifically, although many conservatives say they represent regulatory overreach. Rep. Michael Burgess (R-Texas) introduced legislation this year to repeal efficiency standards ([Greenwire](#), Jan. 5).

Trump's budget blueprint called for cuts at DOE's Office of Energy Efficiency and Renewable Energy, which could have a significant impact on DOE's appliance standards program.

[Click here](#) for the ceiling fan lawsuit.

[Click here](#) for the 60-day notice.



## SCIENCE

### Environmental research quietly thrives at DOD

[Sam Mintz](#), E&E News reporter

Published: Monday, April 3, 2017

Fort Bragg wildlife conservation sign



The Strategic Environmental Research and Development Program's research helped the Army comply with wildlife conservation regulations at Fort Bragg in the 1990s, and the program continues to thrive today. Photo courtesy of Fort Bragg Public Affairs.

As President Trump pushes forward with a budget request that calls for massive cuts to U.S. EPA, there's a surprising place in the federal government where environmental research is thriving: a small, quiet corner of the Department of Defense.

Buoyed by steady Pentagon support, two sister programs — the Strategic Environmental Research and Development Program and the Environmental Security Technology Certification Program — are plugging away with level funding as they make what some experts call an outsized impact on the field.

SERDP, founded in 1990 after a push by Democratic Sens. Sam Nunn of Georgia and Al Gore of Tennessee, funds research on subjects including environmental restoration, resource conservation, and energy and water. ESTCP, created five years later, is a demonstration and validation program that looks to "promote the transfer of innovative technologies that have successfully established proof of concept to field or production use," according to the program's website.

The two are funded by DOD, and operated jointly with EPA and the Department of Energy.

They have survived and thrived through several presidential regime changes, and there's no reason that will change now, said former SERDP Executive Director Jeff Marqusee, now the chief scientist at Noblis, a nonprofit science and technology research organization and DOD contractor.

"My experience has been ... at the DOD, when the leadership arrives, it takes the time to get educated and has been very supportive of these programs," said Marqusee, who worked for the programs for more than 15 years, culminating in a tenure as executive director from 2008 to 2013.

"During the transition from Clinton to the Bush administration, people raised concerns about whether they would support the environmental programs. And they were completely supportive of it. They sat down and found out what was going on, what the challenges were that they faced, and actually recommended an increasing in funding," he said.

The fiscal 2017 defense spending bill passed by the House earlier this year would allocate around \$65 million to SERDP and about \$46 million to ESTCP, which is consistent with what has historically been an overall budget of about \$100 million to \$150 million, according to Marqusee.

That is a tiny fraction of DOD's overall budget of more than \$500 billion. But because of the way SERDP and ESTCP have been organized and managed, that relatively small input has had a big impact.

"The way you have impact in the R&D world is not because you're spending a lot, but because you



influence billions of dollars," said Marqusee.

The programs take the "strategic" part of SERDP's name seriously. "They're trying to tackle issues that are both important to the military and that aren't being tackled by civilian agencies, and then leverage those results," Marqusee said.

That success is partly due to Marqusee's past leadership but also owes credit to the Pentagon's penchant for a sharp focus on operational utility, said Daniel Sarewitz, co-director of the Consortium for Science, Policy & Outcomes at Arizona State University.

"A lot of federal environmental research programs are organized where the research is generated by academic or government scientists, it gets thrown out in the world, and the science gets used or may not be used," said Sarewitz.

"In having these two different programs, SERDP and ESTCP, Marqusee could do what DOD more broadly does very well, which is connect knowledge generation to knowledge use to make sure that the research and the application were complementary," he said.

The programs are accountable to users in DOD, and the success of their research is closely tracked.

"If they don't succeed, they're not going to get the next grant," Sarewitz said.

The effectiveness of the program has helped it make a name for itself in the wider world of scientific research.

"As research dollars get tighter, there are areas in which we are one of the primary funders," said current director Herb Nelson.

## **Woodpeckers and firefighting foam**

All of SERDP's research is pointed toward making the military work better. Often, that means helping it meet regulatory requirements from other agencies, which can make things like wildlife conservation part of the military's mission requirements.

Take the case of red-cockaded woodpeckers.

In the early 1990s, there were "enormous battles" taking place between DOD and the Fish and Wildlife Service, Marqusee said.

Regulations on the management of the endangered woodpeckers had led to severe training restrictions at Fort Bragg in North Carolina, frustrating military leaders and threatening readiness.

"We brought science to bear to understand what are the real habitats, what are the stressors to these species, what are the ways we manage landscape," Marqusee said. The programs funded research on the mortality of longleaf pine trees, on ranking parcels of land by how critical they were to habitats and on the impacts of training on land, among other subjects.

The work helped DOD meet regulations and resume normal training at the base, but it also gave an unexpected boost to readiness.

"The amount of land available to train on dramatically increased. So did the quality of the training," Marqusee said. "It turned out, a healthy habitat for the woodpecker ... was a better habitat for doing dismounted training. It was a better habitat to continue to train with tanks without destroying the landscape."

Another example of how the program's work contributes to the military's goals, cited by both Marqusee and current director Nelson, is research on cleaning up groundwater contamination.

Remediation of emerging contaminants, like perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA), two compounds in a firefighting foam that has been used by the Air Force for decades, has become a costly problem for the Pentagon, both financially and politically ([Greenwire](#), Jan. 31).

But SERDP and ESTCP have managed to reduce those costs by a large magnitude by funding dozens of research projects on subjects like understanding persistent contamination, being better prepared to deal with emerging issues and improving contamination monitoring.

"We had people working on detection before most people knew it was a problem," Nelson said.

## **'Withstanding partisan winds'**

In general, people involved with or interested in the program say they are not worried about politics trickling down to affect its funding or work, but the rapid change involved with a presidential transition can still be a harrowing phase.

"Yes, there's a concern. The concern is, do people jump to conclusions without actually knowing what our program's doing?" said Marqusee. "In Washington ... you've got to be concerned about people making rapid and quick decisions."

But both he and Nelson insisted that SERDP's work is completely apolitical.

"These are not political things. These are wise management of DOD installation things. I don't think we



push many political buttons. We certainly don't try to," said Nelson.

Neither the White House nor the Pentagon has made any statements about SERDP and ESTCP, and a DOD official declined to comment for this story. The first indication of the program's future prospects will likely come in May, when the Trump administration submits details on its fiscal 2018 budget requests for each agency.

Sarewitz said that as long as the programs move past any potential perception problems, they should be in the clear.

"It's built a constituency at DOD. People find it valuable," he said. "As long as the program is explained in the right way, it can totally withstand partisan winds."

## EPA

### Senior official who just quit warns of 'devastating' impacts

[Amanda Reilly](#), E&E News reporter

Published: Monday, April 3, 2017

HOLLYWOOD, Calif. — The former head of environmental justice at U.S. EPA on Friday warned that proposed cuts to the agency's budget would be "devastating" to minority and low-income communities. Mustafa Ali, who quit his position at EPA a few weeks ago, urged the Trump administration to work collaboratively with communities, swiftly appoint a new environmental justice head and step up enforcement activities.

If not, "we will see many more egregious types of actions that will happen inside of those communities and the surrounding area," Ali said at the American Bar Association's annual spring environmental law conference [here](#).

Mustafa Ali



Mustafa Ali. Photo courtesy of the Berkley Center for Religion, Peace and World Affairs at Georgetown University.

Ali formerly served as EPA's assistant associate administrator for environmental justice after working at the agency for nearly two decades under several administrators. He was a founding member of EPA's environmental justice office and also formerly worked on Capitol Hill as a fellow for Rep. John Conyers (D-Mich.).

Last month, Ali wrote a public [letter](#) resigning his post and told reporters that he couldn't "in good conscience be supportive" of the Trump administration's agenda ([Greenwire](#), March 9).

On Friday, Ali expanded on his decision to write the letter, which offers advice to new EPA Administrator Scott Pruitt.

"Our new administrator had said in his Senate confirmation testimony that he understood some basic concepts around environmental justice but he did not have any in-depth knowledge of that space," Ali said. "So I thought that it was important to be able to share the challenges that still exist inside of communities but also to share with him some of the opportunities that exist in working with these communities."

Ali also revealed that he had not had any conversations with Trump administration officials before or after the inauguration about the agency's environmental justice work.

He said he was pleased with the attention that his resignation letter has gotten over the past few weeks.

"I feel comfort in the fact that the perceptions that I was receiving from the administration on their commitment, or lack thereof, to our most vulnerable communities has really come to light now," he said.



Ali also warned that the Trump administration's budget proposal — which would cut EPA's budget by 31 percent and eliminate a host of staff positions — would cut enforcement of environmental laws inside of low-income communities.

The budget has proposed cutting environmental justice, environmental education, climate initiatives and other EPA programs.

While it's unclear whether the Congress will enact those proposals or pass more limited cuts to EPA's budget, certain agency programs are likely to be axed, and enforcement dollars will likely be decreased. Ali slammed the administration as hypocritical for its focus on "certain types of enforcement" and not others in urban areas.

"Our new administration sees great value in certain types of enforcement inside of communities — making sure we have more law enforcement there, which can play a positive role if it's done properly," he said. "But doesn't seem to have the same level of commitment in making sure that we have inspectors and other enforcement personnel around making sure that folks are doing the right thing."

Ali also said reductions in state grants would hurt efforts to work with communities on environmental justice and efforts to gather scientific data needed for enforcement.

Since leaving EPA, Ali has become senior vice president of climate, environmental justice and community revitalization at the nonprofit Hip Hop Caucus.

The former official urged the administration to find a replacement for him as soon as possible.

"In the development of policy, if you do not have someone who is well-versed in this area, then you could have gaps," he said.

Jeff Wood, President Trump's acting top environmental lawyer, said Friday that environmental justice remains a concern for the administration and that the Clinton administration's 1994 executive order directing agencies to address environmental justice issues remains in effect.

## REGULATIONS

### CRA to change agency behavior — former OIRA official

[Arianna Skibell](#), E&E News reporter

Published: Monday, April 3, 2017

Congress' expanded use of the Congressional Review Act to roll back Obama-era rules could lead federal agencies to push up their rulemaking timelines, an expert on regulations said.

Stuart Shapiro, a former Office of Information and Regulatory Affairs aide who served under Presidents Clinton and George W. Bush, said future agency officials will likely try to avoid "midnight" regulations that are vulnerable to the CRA time frame.

"Instead of putting regulations to bed when the proverbial rulemaking clock strikes midnight, expect administrations to tuck more of them in when that clock strikes closer to, say, 10:00 p.m.," Shapiro wrote in a recent [op-ed](#).

Before President Trump took office, the Congressional Review Act, which gives lawmakers 60 legislative days to review and possibly nix agency rules, had only been successfully used once. In 2001, Congress and Bush overturned a Clinton administration rule setting ergonomic standards in the workplace.

Once Congress and the president kill a rule, the agency is prohibited from issuing a "substantially similar" one in the future. The Department of Labor has since been unwilling to test what "substantially similar" means by issuing new ergonomic standards ([E&E Daily](#), Feb. 10).

Since the beginning of the year, Congress and Trump have used the CRA to overturn 13 rules — six of which still require the president's signature. The resolutions mark the new administration's chief domestic policy accomplishment in its first 100 days, Shapiro said.

"The level of legislative activity under the CRA has been greater than many experts — including myself — had predicted," he said.

Congress' infrequent use of the CRA combined with the Senate's limited calendar availability had led experts to predict that five or six resolutions of disapproval would gain passage ([E&E Daily](#), Jan. 10).

"And yet U.S. Senate Majority Leader Mitch McConnell (R-Ky.) has successfully managed the floor of the Senate to allow for the passage of far more CRA resolutions than we anticipated," Shapiro said.

"One unforeseen consequence of this wave of CRA resolutions is that federal agencies in future presidential administrations likely will have a heightened awareness of the CRA."

Amit Narang, regulatory policy advocate for Public Citizen's Congress Watch, agreed that, in the future, agencies will be wary of issuing rules during the CRA window. But, he said, they may not have a choice.

"While agencies will read the fallout as meaning they need to avoid issuing regulations at the end of administrations, they may not be able to because the regulatory process is simply so slow," he said.



Narang added that opponents of certain regulations may attempt to delay final issuance to ensure that the CRA could be used to nix those rules.

Shapiro said that given the "substantially similar" prohibition, agencies have an extra incentive to avoid the CRA window, which could lead to rushed, poorly cobbled rules.

"In the end, rather than improve rulemaking, the CRA process may actually now lead, every four years, to more hastily developed regulations that come at the expense of the high level of regulatory effectiveness and efficiency that the public deserves," he said.

## CLIMATE

### Dems urge teachers to dump Heartland's 'denial' materials

[Hannah Hess](#), E&E News reporter

Published: Monday, April 3, 2017

From left: Reps. Raúl Grijalva (D-Ariz.), Eddie Bernice Johnson (D-Texas) and Bobby Scott (D-Va.)



From left: Reps. Raúl Grijalva (D-Ariz.), Eddie Bernice Johnson (D-Texas) and Bobby Scott (D-Va.), top Democrats on three House committees, are condemning efforts to get materials promoting climate skepticism in school classrooms. Photos courtesy of Wikipedia.

*This article was updated at 5:43 p.m. EDT.*

The top Democrat on the House Education and the Workforce Committee today encouraged teachers to throw out a book titled "Why Scientists Disagree About Global Warming."

Rep. Bobby Scott of Virginia and two other top Democrats condemned the Heartland Institute's campaign encouraging K-12 science teachers to incorporate the view of the small minority that rejects the scientific consensus on climate change into their lesson plans.

The libertarian group plans to mail more than 200,000 copies of that book — along with a DVD arguing that rising temperatures are a natural phenomenon, not the result of greenhouse gas emissions — to public school teachers around the nation over the next few months, according to reporting by "Frontline" ([Climatewire](#), March 30).

A cover [letter](#) from Lennie Jarratt, project manager of Heartland's Center for Transforming Education, sent with the materials asks teachers to "consider the possibility" that the science is not settled.

Scott said today that public school classrooms "are no place for anti-science propaganda" and an inappropriate arena for Heartland to drive that agenda.

Rep. Raúl Grijalva (D-Ariz.), ranking member of the House Natural Resources Committee, suggested the campaign seeks to further corporate polluter interests and should be exposed.

"Let's see how much Heartland believes in this project when schools, teachers, parents, students and our fellow members of Congress tell the group and its corporate funders to end this ridiculous campaign," Grijalva said in a statement.

Republican lawmakers who align with efforts to cast doubt on the vast majority of scientific research, which links rising concentrations of greenhouse gases in the atmosphere to climate change, encourage



Heartland's mission.

House Science, Space and Technology Chairman Lamar Smith (R-Texas) and Sen. Jim Inhofe (R-Okla.) both addressed the group's recent climate conference in Washington ([E&E News PM](#), March 23).

Inhofe has repeatedly argued that schoolchildren are being "brainwashed" into believing in climate change ([Greenwire](#), July 27, 2016).

In response to an inquiry from E&E News, a spokesman for Smith said: "The Heartland Institute is free to send educational materials at no cost to taxpayers to whomever they want, just as environmental activist organizations routinely do."

Rep. Eddie Bernice Johnson (D-Texas), ranking member of the Science Committee, said she wasn't surprised to see a "right-wing organization sending scientifically inaccurate materials on climate change" to teachers across the country the same week Smith convened a "climate-denying" hearing showcasing the partisan divide around the issue ([Greenwire](#), March 29).

"Climate change has emerged as a defining scientific and policy challenge facing humanity," Johnson said. "Scientists, corporations and governments around the world are all working to understand it and devise effective responses to it."

Johnson stressed that accurate information is critical if that effort is to succeed. In an environment where lawmakers across the political spectrum talk about improving science, technology, engineering and math education, she said, "we must, at a minimum, ensure that our children are exposed to the best scientific resources on this issue, not these unsolicited and misleading materials from the Heartland Institute."

Heartland Institute President Joseph Bast asked if the Democrats were making a "belated April Fool's Day joke," calling their condemnations "hilarious."

"On Nov. 8, 2016, voters elected a president who said global warming is not the crisis that President Obama and environmentalists made it out to be. He said if he were elected, he would end the war on fossil fuels, rein in the Environmental Protection Agency, and pursue a pro-energy, pro-environment and pro-jobs agenda. He got elected, and he's attempting to do that ... and Democrats are freaking out," Bast said today.

Bast advised the lawmakers "pull their heads out of the sand long enough to read the book."

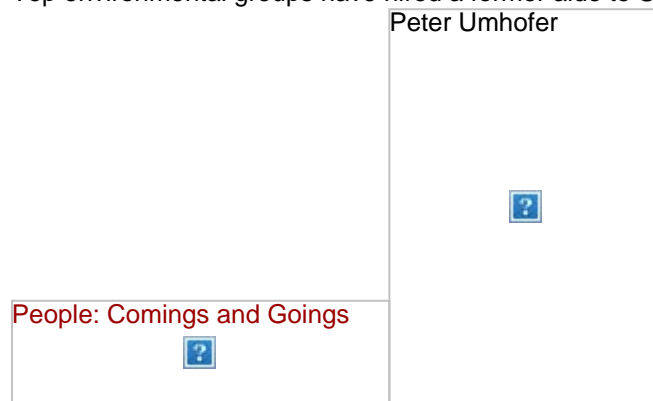
## LOBBYING

### Greens bring on ex-Senate Dem aide for budget battle

[Kevin Bogardus](#), E&E News reporter

Published: Monday, April 3, 2017

Top environmental groups have hired a former aide to Senate Democratic leaders for lobbying help.



Peter Umhofer. Photo courtesy of E&ETV.

Peter Umhofer with E2 Strategies LLC has registered to lobby for both the [National Audubon Society](#) and [the Wilderness Society](#), according to lobbying disclosure records released by the Senate last week.

Records show Umhofer has been lobbying for the groups since late February.

He has been working on issues related to the federal budget, including the continuing resolution that is set to expire April 28, which would cut off funding from the government unless Congress acts.

Umhofer was a policy adviser to former Senate Democratic leaders Harry Reid of Nevada and Tom Daschle of South Dakota. He also served on President Obama's transition team and in the Clinton administration at the Department of the Interior and at the White House Council on Environmental Quality.

## ENERGY EFFICIENCY



## Legal weed hasn't brought expected power use spike

Published: Monday, April 3, 2017

In states that have legalized marijuana, power suppliers expected an energy demand boost from the massive hydroponic growing systems.

But energy demand has fallen off, according to utilities and analysts. The once-illegal businesses no longer have to hide from law enforcement and can grow outside or in greenhouses. Growers are also upgrading to energy-efficient lights, pumps and cooling systems.

The development is a disappointment for utilities hurt by stagnating electricity demand and the rise of renewable energy.

Utilities in Colorado, Washington and Oregon reported 1 to 2 percent power use bumps after legalization. But many of those gains have not lasted.

The marijuana industry is young and evolving, but industry officials expect growers to move outside where climate-appropriate.

"Indoor came about because of prohibition," said Adam Steinberg, a co-founder of Flow Kana, a San Francisco-based marijuana distributor. "Sun-grown cannabis in California has a real opportunity to buck the trend in energy consumption that other states have seen since legalization" (Christopher Martin, [Bloomberg/Denver Post](#), March 31). — **NB**

## COAL

### Peabody hires carbon capture expert, assesses cyclone damage

[Dylan Brown](#), E&E News reporter

Published: Monday, April 3, 2017

Peabody Energy Corp. has hired a carbon capture expert as President Trump continues promising growth in "clean coal."

Chemical engineer Holly Krutka started work today as vice president of coal generation and emissions technologies for Peabody.

She leaves behind her post as senior research and development analyst at Western utility Tri-State Generation and Transmission Association Inc. to join the world's largest private-sector coal company. Holly Krutka



Holly Krutka. Photo courtesy of LinkedIn.

Krutka has spent nearly a decade researching and writing about carbon capture, storage and utilization (CCUS) at coal-fired power plants.

Trump has attacked Obama-era climate measures and proposed slashing federal CCUS research, but he keeps touting "clean coal" technology, which the Intergovernmental Panel on Climate Change has called essential to meeting global climate change goals ([Greenwire](#), March 29).

Krutka, Peabody said, will work on policies to "protect and enhance the existing U.S. coal fleet" and commercialize "high efficiency, low emissions technologies" like CCUS.

"Peabody stands for reliable, accessible and affordable energy that meets the goals of energy security, economic progress and environmental solutions," said Peabody Chief Commercial Officer Charles Meintjes, Krutka's new boss. "Holly has a unique blend of technical and communications skills that will enable us to further Peabody's role as a leading voice for clean coal technologies."

After earning undergraduate and doctoral degrees in chemical engineering from the University of



Oklahoma, Krutka spent almost six years as a researcher for Colorado-based coal research firm Advanced Emissions Solutions Inc.

She focused there on developing a way to capture carbon dioxide produced by coal combustion using dry materials capable of absorbing gases.

Krutka is a member of the National Coal Council, serving as communications committee chairwoman for the federal advisory group that has long championed CCUS.

Krutka also spent three years as executive editor of coal industry journal *Cornerstone*, sponsored by a subsidiary of Chinese state-run energy giant Shenhua Group Corp. Ltd.

China has emerged as a force in CCUS development. While the United States and Canada still have the majority of projects under construction, the Global CCS Institute lists eight large-scale carbon capture facilities in various stages of development in China.

## Cyclone Debbie

This week, Peabody is also dealing with fallout from Cyclone Debbie, which struck Australia last week. The storm, equivalent to a Category 3 hurricane, caused massive flooding in the coal mining region of Queensland.

While mining either continues or has restarted, the storm damaged railways leading to ports from mines supplying more than half the world's seaborne metallurgical coal — coking coal used to manufacture steel.

Railroad Aurizon Holdings Ltd. announced today that it will take about five weeks to repair a rail system connecting Peabody's Bowen Basin mines to the Dalrymple Bay Coal Terminal and Hay Point Coal Terminal.

"It is still too early to assess impacts on volume and results, as well as any effects on second quarter price negotiations with metallurgical coal customers," the company stated.

Metallurgical prices spiked last year after supply disruptions in Australia as well as China.

Less than 10 percent of U.S. coal production is metallurgical.

## NUCLEAR POWER

### TVA phaseouts brought coal spikes, pollution — study

[Cecelia Smith-Schoenwalder](#), E&E News reporter

Published: Monday, April 3, 2017

Sequoyah nuclear plant



The closure of the Sequoyah nuclear plant in Tennessee from 1985 to 1988 brought an increase in coal burning and air pollution, according to a new study. Photo courtesy of Tennessee Valley Authority.

The shift from nuclear power generation to fossil fuel increases pollution and decreases the average birth weight of infants, according to new research.

The [study](#), published in *Nature Energy*, looked at air pollution and infant health after the closure of two nuclear plants by the Tennessee Valley Authority in 1985.



The Browns Ferry plant in Alabama and the Sequoyah plant in Tennessee shut down when the Nuclear Regulatory Commission intensified inspections after the Three Mile Island accident in 1979. Coal-fired plants stepped up to fill the energy void, bringing with them increased air pollution, according to the study.

Counties that experienced the greatest increases in air pollution after the nuclear shutdowns also saw the average birth weight of infants drop by 5.4 percent — or about 134 grams.

Study author Edson Severnini of Carnegie Mellon University suggests that future decisions to phase out nuclear generation should be weighed against the negative health impacts fossil fuels could bring.

He noted that while nuclear energy was replaced by coal in the Tennessee Valley in the 1980s, today it would likely be replaced by natural gas or renewable energy.

## AIR POLLUTION

### Power plants afflict wealthy neighborhoods, too — study

Published: Monday, April 3, 2017

Air pollution from coal-fired power plants can travel miles away, into affluent communities, carrying with it effects on birth weight, new research found.

The study looks at a power plant in Pennsylvania and four wealthy New Jersey counties as far as 30 miles downwind. Women in these counties had a greater risk of having underweight babies than did women in other affluent areas.

Money and access to private health care didn't stop the effects of air pollution, specifically wind-borne sulfur emissions.

Authors of the study, which was published in the *Journal of Policy Analysis and Management*, said it shows that stronger federal regulation of emissions from coal-fired plants is needed.

"Most studies focus on low-wage areas, and we looked at a wealthy region. We are filling a very important gap. This is just the beginning step, an impact on early life through birth outcomes," said lead author Muzhe Yang (Darryl Fears, [Washington Post](#), April 3). — CS

## POWER PLAN HUB

### Pruitt dodges on health impacts of killing carbon rule

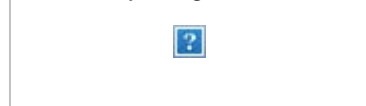
[Rod Kuckro](#), E&E News reporter

E&E News: Monday, April 3, 2017

You can't blame "Fox News Sunday" moderator Chris Wallace for trying.

Several times on yesterday's broadcast, Wallace tried to get U.S. EPA Administrator Scott Pruitt to respond to the adverse health effects of withdrawing the Obama-era Clean Power Plan.

Power Plays Logo



Each Monday, **Power Plays** previews upcoming moves on the way to Clean Power Plan compliance and recaps the week's developments.

Pruitt repeated the Trump administration's argument that the plan, which aimed to reduce the rate of carbon emissions from power plants, was "regulatory overreach" and that President Trump was keeping a campaign promise to kill the plan.

"We have nothing to be apologetic about," he said.

"You're not giving me a health answer. You're giving me a political answer," Wallace replied, citing data that 166 million people in the United States live in places where the air is "unclean."

"One of the key priorities of the administration is to improve air quality," Pruitt said.

"The past administration just made it up. They reimagined authority under the [Clean Air Act]" when they developed the Clean Power Plan, he said.

As for the Paris climate agreement, Pruitt did not directly endorse continued U.S. involvement.

"Engagement internationally is very important. Those discussions should ensue. What Paris represents is a bad deal for this country. We front-loaded our costs; China and India backloaded theirs," he said.

The distinction is that unlike China and India, "we can burn coal in a clean fashion. We shouldn't have this commitment by the U.S. government to say that fossil fuels are bad, renewables are good," Pruitt said.

"The U.S. EPA and the U.S. government should not pick winners and losers."

Wallace played a clip of a recent interview of Pruitt in which he said he did not agree that carbon dioxide



is a "primary contributor" to climate change.

"There's a warming trend, the climate is changing and human activity contributes to that change in some measure," Pruitt said. "The real issue is how much we contribute to it and measuring that with precision." "What if you're wrong?" Wallace asked.

## No more federal implementation plan

EPA today will publish in the *Federal Register* its [withdrawal](#) of proposed rules issued Oct. 23, 2015, addressing a federal implantation plan if states failed to develop their own approach on how to comply with the Clean Power Plan.

The withdrawal is in direct response to the executive order on energy independence that President Trump signed on March 28.

The *Federal Register* notice also withdraws EPA's proposed model carbon trading rules and rules addressing the design of the Clean Energy Incentive Program that would have rewarded states that wanted to comply early with the CPP.

The notice said EPA plans to "use this time to re-evaluate these CPP-related proposals and, if appropriate, put out re-proposals or new proposals to ensure that the public is commenting on EPA's most up-to-date thinking on these issues."

## In case you missed it

- Pruitt told governors that they "have no obligation to spend resources to comply with a rule that has been stayed" ([Climatewire](#), March 31).
- Supporters of the Clean Power Plan are expected to file their formal opposition to the Justice Department's request to halt the litigation this week, while others are planning public protests ([E&E News PM](#), March 29).
- Neither Trump nor Pruitt mentioned climate change when unveiling the executive order to gut EPA's carbon rule. So what's next? ([Climatewire](#), March 29).
- Trump's sweeping renunciation of the Obama administration's environmental policies reduced the world's largest economy to one idea: Coal, burned cheaply and cleanly, will fuel American prosperity this century. There's ample evidence to the contrary ([Energywire](#), March 29).
- Trump's executive order aimed at scrapping Obama-era climate actions scrambles existing litigation and sets the stage for high-stakes courtroom battles to come ([Energywire](#), March 29).
- The attorneys general of 16 states and the District of Columbia signaled they will mount a court challenge to EPA's move to reverse the Clean Power Plan ([E&E News PM](#), March 28).

Climatewire



AN E&E NEWS PUBLICATION

**CLIMATEWIRE — Tue., April 4, 2017**



**READ FULL EDITION**

### **1. BUDGET:**

## **EPA proposal cuts hundreds of climate change employees**

A memo detailing how U.S. EPA would cut its budget by one-third shows that the agency would



eliminate hundreds of employees working on climate change, including 20 lawyers who provide support for the Clean Power Plan.

## TOP STORIES

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### 2. WIND:

**N.D. lawmakers accuse PTC of 'wreaking havoc' on coal sector**

### 3. CALIFORNIA:

**Cap-and-trade costs wielded as weapon in fuel tax hike fight**

## FEDERAL POLICY

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### 4. DOE:

**Trump names Brouillette to No. 2 slot**

### 5. DEFENSE:

**Mattis might not bend to Trump's skepticism on climate**

### 6. DEFENSE:

**Moniz: DOE aided the fight against IS**

### 7. BUDGET:

**GOP hits Pruitt from all sides on budget, climate policy**

### 8. RENEWABLES:

**Tax reform should sustain wind, solar perks — NRDC**

## INTERNATIONAL

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### 9. ENERGY ACCESS:

**World won't meet 2030 energy poverty goals — report**

### 10. FORESTS:

**Land titles save the Peruvian rainforest — study**

## BUSINESS

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### 11. AUTOS:

**Tesla sales break records in 1st quarter**

### 12. FINANCE:

**Investors in tug of war on fossil fuels**

### 13. RENEWABLES:

**Ariz. solar industry bright despite rule rollback**

## SCIENCE AND TECHNOLOGY

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### 14. SCIENCE:

**Warming causing extreme weather that's 'stuck' in one place**

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**ENERGYWIRE — Tue., April 4, 2017** [READ FULL EDITION](#)**1. [SECURITY:](#)****[Officials hope Trump cyber order is worth the wait](#)**

The extended wait for President Trump's cybersecurity executive order may signal a welcomed deeper dive into the challenges, a Department of Homeland Security official said yesterday.

**TOP STORIES****2. [COAL:](#)****[Peabody emerges from bankruptcy](#)****3. [SUPREME COURT:](#)****[Energy law likely unfazed by Gorsuch at SCOTUS — Obama lawyer](#)****ELECTRICITY****4. [ELECTRICITY:](#)****[For power CEOs, the age of the customer is here](#)****5. [RENEWABLES:](#)****[While Trump touts coal, Chile embraces solar power](#)****6. [COAL:](#)****[Cyclone disrupts northeast Australia's exports](#)****OIL AND GAS****7. [INTERIOR:](#)****[Executive order has broad implications for oil regulation](#)****8. [TEXAS:](#)****[Oil regulator pushed to be more transparent](#)****9. [ENERGY:](#)****[Rice's Baker Institute lands \\$1M donation to support conference](#)****10. [NATURAL GAS:](#)****[Qatar ends ban on North Field development](#)**



11. PIPELINES:

**NAmerico proposes gas line from West Texas to Gulf Coast**

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